

Juridic Aspects of the Criminal Action of Child Neglect by Parents

Jumriani Nawawi

Lecturer at the State Islamic Institute (IAIN) Bone

Email: jumrianicrt@gmail.com

Abstract

This research is focused on how positive law enforcement is in providing protection to children from the criminal act of neglect. This study aims to determine the phenomenon related to conflict that often occurs in society in the form of neglect of parents to their children. Protection of children from violent criminal acts in the form of neglect from parents has been strictly regulated in regulations. This type of research is normative juridical research. The research was conducted qualitatively by relying on library research. The results showed that the forms of child neglect were physical neglect, educational neglect, emotional neglect, and medical neglect. Regarding the neglect of children by their parents, they should be legally accountable. The criminal act of neglecting children by their parents is very clearly regulated in the Child Protection Law Number 35 of 2014 concerning Child Protection and the Criminal Procedure Code.

Kajian ini difokuskan pada bagaimana penegakan hukum positif dalam memberikan perlindungan terhadap anak dari tindak pidana penelantaran. Penelitian ini bertujuan untuk mengetahui fenomena terkait konflik yang kerap terjadi dimasyarakat berupa penelantaran orang tua terhadap anaknya. Perlindungan terhadap anak dari tindak pidana kekerasan berupa penelantaran dari orang tua telah diatur secara tegas dalam regulasi. Tipe penelitian ini adalah penelitian yuridis normatif. Penelitian dilakukan secara kualitatif dengan bertumpu pada studi kepustakaan (*library research*). Hasil penelitian menunjukkan bahwa bentuk-bentuk penelantara anak berupa penelantaran fisik, penelantaran pendidikan, penelantaran secara emosi, penelantaran medis. Perihal penelantaran anak yang dilakukan oleh orangtuanya seharusnya dapat dipertanggungjawabkan secara pidana. Tindak pidana penelantaran anak oleh orangtuanya dengan sangat jelas diatur dalam Undang-Undang Perlindungan Anak Nomor 35 Tahun 2014 tentang Perlindungan Anak dan Kitab Undang-Undang Hukum Acara Pidana.

Key words: *Child neglect, criminal act, parents.*

Introduction

Children as God's trust must always be guarded and protected, because they inherent dignity and rights as a human being that must be upheld. Problems related to children become a hot topic in a conversation or news in Indonesia. Children are the successor of the nation and are the successors of the family. They are the next generation of the nation who are obliged to get legal protection in the country where they were born and are obliged to get legal protection by their own country and especially by their parents.¹

Children's rights are part of the human rights contained in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child. Viewed from the side of the life of the nation and state, children are heirs and at the same time a portrait of the nation's future. The next generation is the ideal of the nation, so that every child has the right to survival, growth and development, participation as well as civil rights and freedoms.²

Law No. 35 of 2014, a child is someone who is not yet 18 (eighteen) years old, and also includes a child who is still in the womb. Legal protection for children, especially in Indonesia, has been explicitly regulated in a legal instrument, namely the 1945 Constitution of the Republic of Indonesia and in particular Indonesia has regulated and provided protection for children in a Law Number 35 of 2014.³ Child protection referred to in this case is all forms of activities in guaranteeing children's human rights so that they can live, develop and participate and are free from all forms of discrimination.⁴

The family is a place where children get care and assistance as a natural environment for their growth and well-being. So that children are able to carry out a responsibility in society. Children should be treated well in a happy, loving and understanding family environment, and then prepared to face personal life in society and raised in an atmosphere of peace, tolerance, and independence.⁵

In addition to children's rights, in their lives it is still necessary to have responsibilities from parents to children, so that children's rights can run well. The responsibility of parents to children is the embodiment of the rights of children, if parents are able to play the roles as expected in the regulation and parental love for

¹Irma Setyo Wati Soemitro, *Aspek Hukum Perlindungan Anak* (Jakarta: Bumi Aksara, 1990), p. 10.

²Andi Syamsu Alam and M. Fauzan Hukum, *Pengangkatan Anak Perspektif Islam* (Jakarta: Kencana, 2008), p. 1

³Irma Setyo Wati Soemitro, *Aspek Hukum Perlindungan Anak*, p. 10.

⁴Waluyadi, *Hukum Perlindungan Anak* (Bandung: Mandar Maju, 2009), p. 1.

⁵Darwan Prinst, *Hukum Anak di Indonesia* (Bandung: PT. Citra Aditya Bakti, 1997), p. 103-104.

children, then the life of children in society will become children who are beneficial to the family and the surrounding environment. and the country in general.⁶

At this time, cases of violence against children have become the center of attention of the government lately, many cases have occurred in Indonesia and not least of these cases are in the form of child neglect. What is meant by child neglect is an act that does not take care of, does not provide food, clothing, shelter or affection from both parents for a child. A child can be said to be neglected if the child does not get the fulfillment of his basic needs properly, both spiritually, physically, and socially. A child who is said to be neglected is not because one of the child's parents have died.⁷ Several factors that cause violence against children are economic, environmental and child problems, so control is needed from the government and families.⁸

Parents should not treat their children arbitrarily, for that the rule of law regulates responsibility for criminal acts committed by parents who neglect their children, abandoned children have the same rights as other children so there is no reason for society not to accept it wholeheartedly. Children should be able to grow and develop into human beings who are physically and mentally healthy, intelligent, happy, of high morals and commendable, because in the future they are assets that will determine the quality of the nation's civilization.

Legal behavior in the community that views parental neglect of their children is a normal thing, so that so many parents unknowingly have neglected their own children. With cases of neglect that often occur, then positive law in Indonesia should be able to be enforced in order to provide protection for children from acts of neglect by their own parents.

Discussion

Forms of Child Abandonment

According to Barda Nawawi Arief, legal protection for children is an effort to protect the law against various freedoms and human rights (fundamental rights and freedoms of children) as well as interests related to the welfare of children.⁹ Child protection is a joint activity aimed at securing, procuring and fulfilling the spiritual and physical welfare of children in accordance with their interests and

⁶Gatot Supramono, *Hukum Acara Pengadilan Anak* (Jakarta: Djambatan, 2005), p. 8

⁷Irma Setyo Wati Soemitro, *Aspek Hukum Perlindungan Anak*, p. 25.

⁸Gomgom T Siregar, and Irma Cesilia Syarifah Sihombing. "Tinjauan Yuridis Tindak Kekerasan Orang Tua Terhadap Anak." *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 2.1 (2020), p. 75-88.

⁹Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2001), h.156.

Juridic Aspects of the Criminal Action of Child...

Jumriani Nawawi

DOI: 10.35673/al-bayyinah.v4i2.2619

human rights.¹⁰ There are no appropriate words other than to say that child protection is the most important thing in building the biggest investment in a nation's civilization. Because if the phenomenon of various forms of violence continues to afflict children, it is not impossible when they reach adulthood, they will become the biggest contributor to crime in a country.¹¹ Child protection according to regulations is also embodied in Law no. 23 of 2002 concerning Child Protection, that all activities are to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection from violence and discrimination.¹²

Parents have an important role in the growth and development of children in the form of education, attention, responsiveness to the needs and desires of children, the affection and warmth of parents with children. Parental education places more emphasis on moral aspects or personality formation rather than education to master science, the basis, and objectives of providing individual family education, in accordance with the life views of their respective parents, even though Indonesian families have the same basis nationally, namely Pancasila. There are parents in educating their children based on religious principles and emphasizing the educational process on religious education and the goal is to make their children become pious people and always have piety and faith in God Almighty. There are also parents whose basic and purpose of providing education is oriented towards social and economic life of the community with the aim of making their children productive and useful in community life.¹³

Child neglect is one of the worst forms of treatment and acts of violence experienced by children and this is a violation of human rights against children. Guidance from parents and support from the community environment to introduce good deeds and bad/deviant deeds and the consequences of each of these actions to children are expected to shape children's mental and morals to be better so that children are able to protect themselves from negative environmental influences that may shape behavior bad for children. However, at this time there are still many parents who let their children who are still underage be neglected. Even though he did not realize his actions had violated the law that had been promulgated.

¹⁰Arif Gosita, *Masalah Korban Kejahatan* (Jakarta: PT Bhuana Ilmu populer, 2004), p. 18.

¹¹Majda El Muhtaj, *Dimensi-Dimensi HAM: Mengurai Hak Ekonomi, Sosial, dan Budaya* (Jakarta: PT. Raja Grafindo Persada, 2013), p. 231.

¹²Republik Indonesia, *Undang-Undang Nomor 35 Tahun 2014 tentang perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*, 1 Angka 2

¹³Ardiansyah, Ferdricka Nggeboe, and Abdul Hariss. "Kajian Yuridis Penelantaran Anak Oleh Orang Tua Menurut Perspektif Hukum Indonesia." *Legalitas: Jurnal Hukum* Vol. 7, No. 1 (2017), p. 102.

Abandoned or neglected children as stated in Article 1 Number 6 of Law Number 35 of 2014 concerning Child Protection, that abandoned children are children whose needs are not met properly, physically, mentally, spiritually, and socially. In various studies on violations of children's rights, cases of child neglect actually fall into the category of child abuse, theoretically neglect is an act, whether intentional or unintentional, leaving children unfulfilled their basic needs (clothing, food, shelter). Abandonment of children does not recognize the reasons for motivation/intention. Intentionally or not, if a child is left without food, a proper place to live and proper clothing to protect him from various diseases and dangers, this incident is said to be neglected and subject to sanctions.¹⁴

Child neglect is the most common form of child abuse. A child may be left starving or dirty, or without proper clothing, shelter, supervision, or health care. This can be dangerous for children and young people. This can have long-lasting effects on their physical and mental well-being.

The forms of child neglect can be categorized, including (1) physical neglect; this category represents the most cases, for example delays in seeking medical assistance, inadequate supervision and the unavailability of the need for a sense of security in the family. (2) Educational neglect; educational neglect occurs when a child seems to have received an appropriate education even though the child cannot perform optimally. Over time, this can result in declining school performance. There are even parents who let their children not go to school. (3) Emotional neglect; this happens when parents are not aware of the presence of children when fighting with their partners or parents provide different treatment and affection between their children. (4) Medical neglect; This happens because when parents fail to provide medical services for their children, even though they are financially adequate. In some cases, parents provide traditional medicine first, before deciding to see a doctor.¹⁵

Abandoned or neglected children caused by parents should be given the burden of criminal responsibility against parents because these actions are also a category of cases of human rights violations.

Most parents inadvertently neglect their children. Researchers say that negligent parenting can arise due to childhood experiences or psychological stress experienced by parents or caregivers. These are parental problems that cause children to be neglected: (1) Many parents are negligent because in their childhood they were neglected or abused; (2) very young or inexperienced parents may also not

¹⁴Bagong Suyanto, *Masalah Sosial Anak* (Jakarta: Prenada Media Group, 2016), p. 229

¹⁵Esterina Fransi Rompas, "Pertanggungjawaban Pidana Terhadap Pelaku Penelantaran Anak Menurut UU No. 23 Tahun 2002 jo UU No. 35 Tahun 2014 tentang Perlindungan Anak", *Lex Administratum*, Vol. V, No. 2, p. 145.

fully understand how to care for a child; (3) circumstances that put the family under tremendous stress such as poverty, divorce, illness, or disability; (4) parents who use alcohol or illegal drugs can also neglect their children.

Criminal Sanctions Against Parents Neglecting Their Children

Parents are the oldest educational institutions, informal, first and foremost experienced by children and educational institutions that are natural, parents are responsible for maintaining, caring for, protecting, and educating children so that they grow and develop properly.¹⁶

Neglect of children is one of the worst forms of treatment and acts of violence experienced by children and this is a violation of human rights against children. The form of legal protection by the State for children has actually been stated by the establishment of special laws for children including Law Number 35 of 2014 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In addition to protection from the state, what is no less important is the role of parents and society in shaping children's mental and moral values.

The criminal aspect of child neglect can be legally and criminally accountable, this has been clearly regulated in Article 305 and Article 308 of the Criminal Code and Law Number 35 of 2014 Article 77 letter (B). Normatively, both the Criminal Code and the child protection law have regulated sanctions for parents who neglect their children.¹⁷

Child neglect is a violation of human rights because cases of child neglect take away the basic rights that children should have, such as the right to a decent life. From the statement above, it emphasizes that cases of neglect of children are cases that require a criminal responsibility to parents who have abandoned their children because the prohibition against child neglect has clear rules as in Article 76B of Law Number 35 of 2014 concerning Child Protection, that "Everyone is prohibited from placing, allowing, involving, ordering to involve children in situations of mistreatment and neglect". The case against child neglect is based on data from the Ministry of Social Affairs taken from the SIKS-NG Integrated Data Dashboard as of December 15, 2020, that the number of neglected children in Indonesia is 67,368 people.¹⁸ The large number of neglected children in Indonesia

¹⁶ Binti Maunah, *Ilmu Pendidikan* (Yogyakarta: Teras, 2009), p. 92.

¹⁷Febriarni Lolita Sjamsuddi, "Penegakan Hukum Pidana Terhadap Penelantaran Anak Yang Dilakukan oleh Orang Tua." *Lex Crimen* Vol. 10, No. 2 (2021), p. 233.

¹⁸Kemenko PMK, "Penanganan Anak terlantar Butuh Komitmen", retrieved from <https://www.kemenkopmk.go.id/penanganan-anak-terlantar-butuh-komitmen>, Accessed on Februari 18, 2022

reaps several factors that become the background why parents easily neglect their children.

Child protection according to regulations is also embodied in Law no. 23 of 2002 concerning Child Protection, that all activities are to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection from violence and discrimination.¹⁹

Child protection is a manifestation of justice in a society, thus child protection is sought in various fields of state and social life. Arif Gosita stated that legal certainty needs to be sought for the continuity of child protection activities and to prevent abuses that have undesirable negative consequences in the implementation of child protection.²⁰ Efforts to protect children are a manifestation of the State in ensuring the welfare of children. Protection of children is a human right. The meaning of the child in the Elucidation of the Law of the Republic of Indonesia Year 35 of 2014 concerning Amendments to Law 23 of 2002, concerning Child Protection which states that the child is a mandate as well as a gift from God Almighty who must always be protected because of his inherent dignity and human rights that must be upheld.²¹

Criminal responsibility which must then be given by the perpetrator or parent who neglect their children as stipulated in the legislation, namely Law Number 35 of 2014 concerning Child Protection and the Criminal Code, as follows:

1. Law Number 35 of 2014 concerning Child Protection
 - a. Article 76B that Everyone is prohibited from placing, allowing, involving, ordering to involve Children in situations of mistreatment and neglect.
 - b. Article 77B Anyone who violates the provisions as referred to in Article 76B, shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).
 - c. Article 77 of Law Number 23 of 2002 concerning Child Protection, that any person who intentionally acts:
 - 1) discrimination against children which causes the child to suffer losses, both materially and morally, thus hampering his social function; or

¹⁹Republik Indonesia, *Undang-Undang Nomor 35 Tahun 2014 tentang perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak*, 1 Angka 2

²⁰Maidin Gultom, *Perlindungan Hukum Terhadap Anak* (Bandung: PT. Refika Aditama, 2008), p. 33.

²¹Nashiana, *Perlindungan Hukum Pidana Bagi Anak di Indonesia* (Jakarta: Gramedia, 2014), p. 1.

- 2) neglect of children which causes the child to experience pain or suffering, whether physical, mental, or social,
- 3) shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

2. Criminal Code (KUHP)

- a. Article 305 of the Criminal Code states that: "Anyone who places a child who is not yet seven years old to be found or leaves the child with the intention of breaking away from him, is threatened with a maximum imprisonment of five years and six months."
- b. Article 306 of the Criminal Code states; (1) If one of the acts based on Article 305 results in serious injury, the guilty person shall be punished by a maximum imprisonment of seven years and six months. (2) if it results in death, the maximum imprisonment is nine years.
- c. Article 307 of the Criminal Code states that: "if the one who commits a crime based on Article 305 is the father or mother of the child, the punishment specified in articles 305 and 306 can be increased by a third"
- d. Article 308 of the Criminal Code states that: "if a mother is afraid that people will find out about the birth of her child, shortly after giving birth, places her child to be found or leaves her with the intention of breaking away from him, then the maximum penalty as stated in Article 305 and Article 306 is reduced by half".

Based on the legal sanctions that can be given to the perpetrators or parents who neglect the above children, that when viewed from the perspective of Law Number 35 of 2014 concerning Child Protection, namely imprisonment for a maximum of 5 (five) years and then for fines imposed given a maximum of 100,000,000 (one hundred million). Furthermore, from the perspective of the Criminal Code above, that the prison sentence given to perpetrators of child neglect is a maximum of 5 (five) years and 6 (six) months and the prison sentence will increase if elements of the crime committed by the perpetrator are found aggravating elements of punishment such as causing serious injury or even violence.

Conclusion

The forms of child neglect consist of physical neglect, educational neglect, emotional neglect, and medical neglect. Child neglect or abandonment is an ongoing failure to meet the basic needs of the child. There are two forms of responsibility that can be given based on Law Number 35 of 2014 concerning Child Protection and the Criminal Code, namely imprisonment and fines. This is because Law Number 35 of 2014 concerning Child Protection has emphasized the

Juridic Aspects of the Criminal Action of Child...

Jumriani Nawawi

DOI: 10.35673/al-bayyinah.v4i2.2619

need for heavier criminal sanctions and fines for perpetrators of crimes against children, to provide a deterrent effect, and to encourage concrete steps to recover physically, psychologically, and socially and/or the child of a criminal.

References

- Alam, Andi Syamsu and M. Fauzan Hukum. *Pengangkatan Anak Perspektif Islam*. Jakarta: Kencana, 2008.
- Ardiansyah, Ardiansyah, Ferdicka Nggeboe, and Abdul Hariss. "Kajian Yuridis Penelantaran Anak Oleh Orang Tua Menurut Perspektif Hukum Indonesia." *Legalitas: Jurnal Hukum* 7.1 (2017): 98-144.
- Arief, Barda Nawawi. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*. Bandung: Citra Aditya Bakti, 2001.
- Bahri, Andi Samsul. "Comparative Study: The Concept of Legitimate Children in The Perspective of Positive Law and Islamic Law." *Al-Bayyinah* 5.1 (2021): 43-56.
- Djamal, Djamal. "WASIAT WAJIBAH BAGI ANAK ANGKAT DALAM RANGKA PERLINDUNGAN HUKUM TERHADAP ANAK (Perspektif Undang-undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak dan Kompilasi Hukum Islam)." *Al-Bayyinah* 2.2 (2018): 117-134.
- Gosita, Arif. *Masalah Korban Kejahatan*. Jakarta: PT Bhuana Ilmu populer, 2004.
- Gultom, Maidin. *Perlindungan Hukum Terhadap Anak*. Bandung: PT. Refika Aditama, 2008.
- Kemenko PMK, "Penanganan Anak terlantar Butuh Komitmen", retrieved from <https://www.kemenkopmk.go.id/penanganan-anak-terlantar-butuh-komitmen>, Accessed on February 18 2022
- Lahaji, Lahaji, and Sulaiman Ibrahim. "Fiqh Perempuan Keindonesiaan." *Al-Bayyinah* 3.1 (2019): 1-14.
- Maunah, Binti. *Ilmu Pendidikan*. Yogyakarta, 2009.
- Muhtaj, Majda El. *Dimensi-Dimensi HAM: Mengurai Hak Ekonomi, Sosial, dan Budaya*. Jakarta: PT. Raja Grafindo Persada, 2013.
- Nashiana. *Perlindungan Hukum Pidana Bagi Anak di Indonesia*. Jakarta: Gramedia, 2014.
- Prinst, Darwan. *Hukum Anak di Indonesia*. Bandung: PT. Citra Aditya Bakti, 1997.
- Republik Indonesia, Undang-Undang Nomor 35 Tahun 2014 tentang perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

Juridic Aspects of the Criminal Action of Child...

Jumriani Nawawi

DOI: 10.35673/al-bayyinah.v4i2.2619

Rompas, Esterina Fransi. "Pertanggungjawaban Pidana Terhadap Pelaku Penelantaran Anak Menurut Uu No. 23 Tahun 2002 Jo Uu Ri No. 35 Tahun 2014 Tentang Perlindungan Anak." *Lex Administratum* 5.2 (2017).

Suyanto, Bagong. *Masalah Sosial Anak*. Jakarta: Prenada Media Group, 2016.

Supramono, Gatot. *Hukum Acara Pengadilan Anak*. Jakarta: Djambatan, 2005.

Soemitro, Irma Setyo Wati. *Aspek Hukum Perlindungan Anak*. Jakarta: Bumi Aksara, 1990.

Siregar, Gomgom TP, and Irma Cesilia Syarifah Sihombing. "TINJAUAN YURIDIS TINDAK KEKERASAN ORANG TUA TERHADAP ANAK." *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 2.1 (2020): 75-88.

Sjamsuddi, Febriarni Lolita. "PENEGAKAN HUKUM PIDANA TERHADAP PENELANTARAN ANAK YANG DILAKUKAN OLEH ORANG TUA." *LEX CRIMEN* 10.2 (2021).

Waluyadi. *Hukum Perlindungan Anak*. Bandung: Mandar Maju, 2009.